

**ENTERED**

August 01, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISIONThe STATE OF TEXAS, GUN OWNERS §  
OF AMERICA, INC., GUN OWNERS §  
FOUNDATION, and BRADY BROWN, §

Plaintiffs, §

v. §

Civil Action No. 6:23-CV-00013

U.S. BUREAU OF ALCOHOL, §  
TOBACCO, FIREARMS AND §  
EXPLOSIVES, U.S. DEPARTMENT OF §  
JUSTICE, and STEVEN M. §  
DETTELBAUGH, Director of the U.S. §  
Bureau of Alcohol, Tobacco, Firearms §  
and Explosives, in his official capacity, §

Defendants. §

ORDER

Before the Court is Defendants' Motion to Stay Proceedings. (Dkt. No. 58). Defendants ask the Court to stay this case pending resolution of the expedited appeal of the district court's order denying a preliminary injunction in *Mock v. Garland*, No. 23-10319. (*Id.* at 2). Plaintiffs oppose the Motion, asserting that they have raised independent arguments of first impression that the Fifth Circuit may not address in *Mock*. (Dkt. No. 61 at 1-2). This Court is aware of several other pending cases that challenge the same Final Rule that the Plaintiffs challenge in this case.<sup>1</sup> A few of these cases have

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<sup>1</sup> See *Second Amend. Found., Inc. v. ATF*, No. 3:21-CV-00116 (N.D. Tex.) (Boyle, J.); *Mock v. Garland*, No. 4:23-CV-00095 (N.D. Tex.) (O'Connor, J.); *Britto v. ATF*, No. 2:23-CV-00019 (N.D. Tex.) (Kacsmayk, J.); *Watterson v. ATF*, No. 4:23-CV-00080 (E.D. Tex.) (Mazzant, J.); *Firearms Regul. Accountability Coal., Inc. v. Garland*, No. 1:23-CV-00024 (D.N.D.) (Hovland, J.); *Miller v. Garland*, No. 1:23-CV-00195 (E.D. Va.) (Alston, J.).

been stayed pending resolution of the Fifth Circuit’s review of *Mock*. See *Second Amend. Found., Inc. v. ATF*, No. 3:21-CV-00116, 2023 WL 4497266 (N.D. Tex. July 10, 2023); *Britto v. ATF*, No. 2:23-CV-00019, Dkt. No. 61 (N.D. Tex. June 26, 2023). The Court finds that a stay is appropriate in this case and therefore **GRANTS** the Motion. (Dkt. No. 58).

## I. LEGAL STANDARD

“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936). The power to stay a case includes “when a related case with substantially similar issues is pending before a court of appeals.” *Greco v. Nat’l Football League*, 116 F.Supp.3d 744, 761 (N.D. Tex. 2015); accord *Trinity Indus., Inc. v. 188 L.L.C.*, No. 3:02-CV-00405, 2002 WL 1315743, at \*2–3 (N.D. Tex. June 13, 2002). However, the Court must carefully consider the competing interests and exercise this power with moderation. *Landis*, 299 U.S. at 254–55, 57 S.Ct. at 166.

## II. DISCUSSION

The Court finds that a brief stay is appropriate in this case. The Court has previously noted that the *Mock* case is “substantially similar” to this case when granting in part Plaintiffs’ Motion for Preliminary Injunction pending resolution of *Mock*. (Dkt. No. 51 at 2, 7). In its preliminary injunction, the Court noted that the resolution of the *Mock* appeal will almost certainly affect, if not control, the disposition of some of the issues in this case. (*Id.* at 3). While Plaintiffs raise some arguments that were not raised

in *Mock*, the issues overlap considerably. Waiting for the Fifth Circuit's resolution of *Mock* will almost certainly avoid duplicative efforts and superfluous litigation.

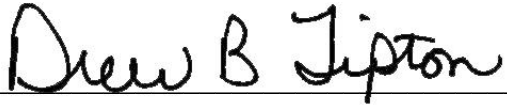
Additionally, any possible prejudice to Plaintiffs is minimal for at least two reasons. First, the stay is likely to be short, as a decision in *Mock* is expected to be forthcoming soon. The Fifth Circuit granted an expedited appeal and heard oral argument in June. Second, Plaintiffs are currently covered by the Court's preliminary injunction, which enjoins enforcement of the challenged agency rule against Plaintiffs.

### III. CONCLUSION

For these reasons, the Court **GRANTS** Defendants' Motion to Stay Proceedings. (Dkt. No. 58). This case is **STAYED** pending the Fifth Circuit's resolution of the expedited appeal in *Mock v. Garland*, No. 23-10319. The Parties shall file a status report with seven days of the Fifth Circuit's decision in *Mock*.

It is SO ORDERED.

Signed on July 31, 2023.

  
DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE